

# EXHIBIT E

TRADEMARK  
Attorney Docket No. 502727

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)	
	)	
Ultrasonic Power Corporation	)	
	)	
Mark: SIMULTANEOUS	)	
MULTI-FREQUENCY	)	
	)	
Serial No.: 78/386,756	)	TM Attorney: John E. Michos
	)	Law Office: 105
Filed: March 18, 2004	)	

AMENDMENT

Assistant Commissioner for Trademarks  
BOX RESPONSES NO FEE  
P.O. Box 1451  
Alexandria, VA 22313-1451

Sir:

In response to the official actions e-mailed on September 29, 2004, and on October 1, 2004, reconsideration of this application for registration in view of the following statements and attached declaration is respectfully solicited.

The Applicant wishes to thank the Examiner for searching the office records and for the indication that no similar registered or pending marks which would bar registration under the Trademark Act Section 2(d) have been found.



03-28-2005  
U.S. Patent & TMO/TM Mail Rpt Dt. #77

In Re The Appln. of: Ultrasonic Power Corporation  
Serial No: 78/386,756

The Examiner has refused registration because the proposed mark is allegedly merely descriptive of a feature or characteristic of the Applicant's goods and/or services under the Trademark Act Section 2(e)(1). As discussed below, we believe that not only did the U.S. Patent and Trademark Office fail to meet its burden of showing by clear evidence that Applicant's mark is primarily merely descriptive (see *In re Pennzoil Products Co.*, 20 USPQ2d 1753, 1758 (TTAB 1991)), but that Applicant's mark is in fact not primarily merely descriptive. "There is a thin line between a suggestive and a merely descriptive designation, and where reasonable men may differ, it is the Board's practice to resolve doubt in Applicant's favor and publish the mark for opposition." *In re Intelligent Medical Systems Inc.*, 5 USPQ2d 1674, 1676 (TTAB 1987); *In re Aid Laboratories, Inc.*, 221 USPQ 1215, 1216 (TTAB 1983); *In re Gourmet Bakers, Inc.*, 173 USPQ 565, 565 (TTAB 1972).

In support of the refusal, the Examining Attorney has submitted an online advertisement from the Applicant's website, and the webpage from another website. However, in each of these print outs the usage of the mark SIMULTANEOUS MULTI-FREQUENCY is used conspicuously using a title case and is set apart with quotation marks. Further, it is clear that the description of the ultrasonic cleaning from the Musicare website is describing the Applicant's equipment as it has also used the Applicant's trademark "VIBRA-BAR" in this description, and has also set off the mark SIMULTANEOUS MULTI-FREQUENCY in quotation marks and has used title case for the font. This clearly indicates recognition of the trademark status of this mark.

The Examining Attorney has relied on the usage on these two websites as showing descriptive use. Applicant believes that what is shown is at worst sloppy usage which is not determinative of the issue. *Books on Tape, Inc. v. The Booktape Corp.*, 5 USPQ2d 1301, 1302 (Fed. Cir. 1987); *In re Bel Paese Sales Co.*, 1 USPQ2d 1233, 1235 (TTAB 1986). However, as indicated above, even such sloppy usage sets off this mark with quotations and the title case font.

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Accordingly, the Applicant requests that the Examining Attorney withdraw this refusal.

While Applicant believes that its mark is not primarily merely descriptive, if the Examining Attorney wishes to maintain this refusal after a review of Applicant's arguments on this issue, Applicant's mark has also acquired distinctiveness.

In particular, Applicant submits the following evidence of acquired distinctiveness: Declaration of Steven Klinger, President of Ultrasonic Power Corporation; and a full page advertisement specification sheet that is provided to customers, potential customers, and that is made available at tradeshow and exhibits. As seen from this evidence, Applicant's mark has been in substantially exclusive and continuous use by Applicant in commerce for the five years before the date on which this claim of distinctiveness is made. Such continued use is proof of acquired distinctiveness. See 15 U.S.C. § 1052(f).

Given the marks secondary meaning, the refusal as primarily merely descriptive should be withdrawn. 15 U.S.C. § 1052(f); see also *In re Homes & Land Publishing Corp.*, 24 USPQ2d 1717, 1718 (TTAB 1992).

The Examiner has requested information to show the nature of goods on which the Applicant uses the mark, and has suggested that the Applicant submit samples of advertisements or promotional materials. The Applicant has included such an advertisement or promotional material as Exhibit 1 to the Declaration of Steven Klinger, included herewith. The Applicant respectfully submits that this Exhibit satisfies the request for information.

The Examiner, in a separate action e-mailed October 1, 2004, which incorporated the Office Action dated September 29, 2004, by reference, indicated that the identification of goods is unacceptable as indefinite. Specifically, the Examiner indicated that the current description

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includes goods in more than one International Class. The Examiner was kind enough to provide an identification of goods that would be acceptable. As such, the Applicant's wish to adopt the Examiner's suggestion and amend the identification of goods as follows:

**International Class 7**

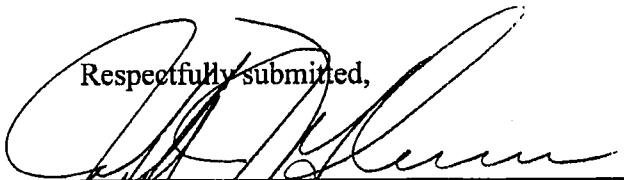
Ultrasonic cleaning systems comprising ultrasonic generators, cleaning tanks, and ultrasonic transducers, for industrial and commercial use

In view of the Applicant's adoption of the suggested identification of goods, and its corresponding limitation to only goods in one International class, the Applicant's respectfully submit that the submitted filing fees are sufficient to cover the class and this application. The Applicant wishes to thank the Examining Attorney for his suggestion.

In view of the above the Applicant respectfully submits that the mark is in good form for registration on the Principal Register of the United States Patent and Trademark Office. Reconsideration of this registration application, allowance, and publication for opposition of this mark are respectfully solicited.

If the Examining Attorney believes that a telephonic conversation will aid in the resolution of any issues not resolved herein, the Examining Attorney is invited to contact the Applicant's Attorney at the telephone number listed below.

Respectfully submitted,



Jeffrey J. Makeever  
LEYDIG, VOIT & MAYER, Ltd.  
6815 Weaver Road, Suite 300  
Rockford, Illinois 61114-8018  
(815) 963-7661 (telephone)  
(815) 963-7664 (facsimile)

Date: March 24, 2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	)	
	)	
Ultrasonic Power Corporation	)	
	)	
Serial No. 78/386,756	)	John E. Michos
	)	Trademark Examining Atty.
Filed: March 18, 2004	)	Law Office 105
	)	
Mark: SIMULTANEOUS MULTI-FREQUENCY	)	

**DECLARATION UNDER 37 C.F.R. §2.20**

I, Steven R. Klinger, hereby declare and make the following statements in support of the above-referenced application.

1. I am the President of Ultrasonic Power Corporation. I was first employed by Ultrasonic Power Corporation in September 8, 1995. In my position as President, I come into contact with consumers of our Ultrasonic Cleaning Systems on a constant basis. I am also aware of the history of our product and of the use of the mark SIMULTANEOUS MULTI-FREQUENCY from Applicant's business records and through the performance of my duties. I make this Declaration on personal knowledge and belief and in support of Applicant's claim of acquired distinctiveness.

2. The mark has become distinctive of Applicant's ultrasonic cleaning systems through the substantially exclusive and continuous use of the mark in commerce by Applicant for at least the five (5) years immediately before the date of this statement.

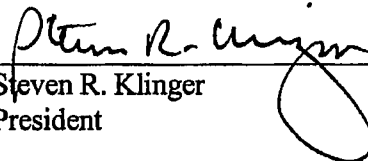
3. Indeed, Ultrasonic Power Corporation has been using the mark SIMULTANEOUS MULTI-FREQUENCY through substantially exclusive and continuous use in commerce on or in connection with Ultrasonic Cleaning Systems since October 15, 1982, more than five (5) years from the date of this declaration. Accordingly, the mark has become distinctive of Applicant's ultrasonic cleaning systems. It was first used in interstate commerce on October 15, 1982.

4. Ultrasonic Power Corporation has used the mark in advertising for its Ultrasonic Cleaning Systems as seen from the accompanying Exhibit 1. This exhibit includes a full page advertisement specification sheet that is provided to customers, potential customers, and that is made available at trade shows and exhibits.

5. I declare further that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or document and any registration resulting therefrom.

Signed,

3-23-05  
Date

  
\_\_\_\_\_  
Steven R. Klinger  
President

CERTIFICATE OF MAILING

I hereby certify that the following documents pertaining to Serial No. 78/386,756 in the name of Ultrasonic Power Corporation including: (a) Amendment, (b) Declaration of Steven Klinger, (c) Exhibit 1 (Advertisement specification sheet), and (d) this Certificate of Mailing are being deposited with the United States Postal Service as first class mail on March 24, 2005, in an envelope addressed to the Assistant Commissioner for Trademarks, BOX RESPONSES NO FEE, P.O. Box 1451, Alexandria, VA 22313-1451.

Melissa Goodrich

(Typed or printed name of person mailing paper or fee)

Melissa Goodrich

(Signature of person mailing paper or fee)



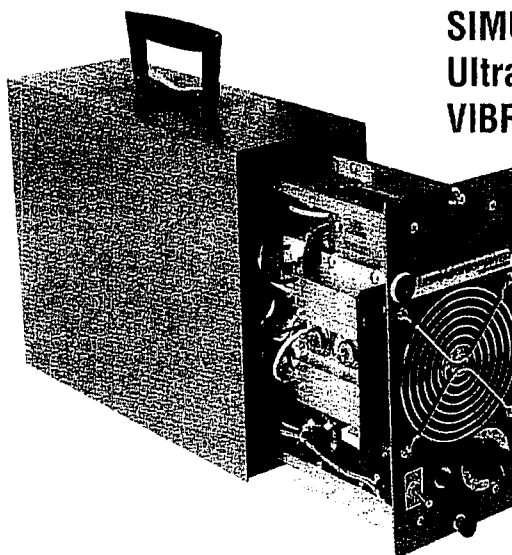
[REDACTED]



Since 1973, Ultrasonic Power Corporation has provided ultrasonic generators and transducers for thousands of diverse cleaning applications. Whether you are a small manufacturer or a large OEM, we have the experience to take your project start to finish. Our standard and custom engineered generators and "Vibra-bar" transducers are the industry standard for quality and reliability. No matter what your needs, our engineers will work with you to design the equipment that best suits your application.

# Ultrasonic Power Corporation's PRODUCTS AND SERVICES

for all ultrasonic cleaning applications



## SIMULTANEOUS MULTI-FREQUENCY Ultrasonic Generators & VIBRA-BAR® Transducer Systems

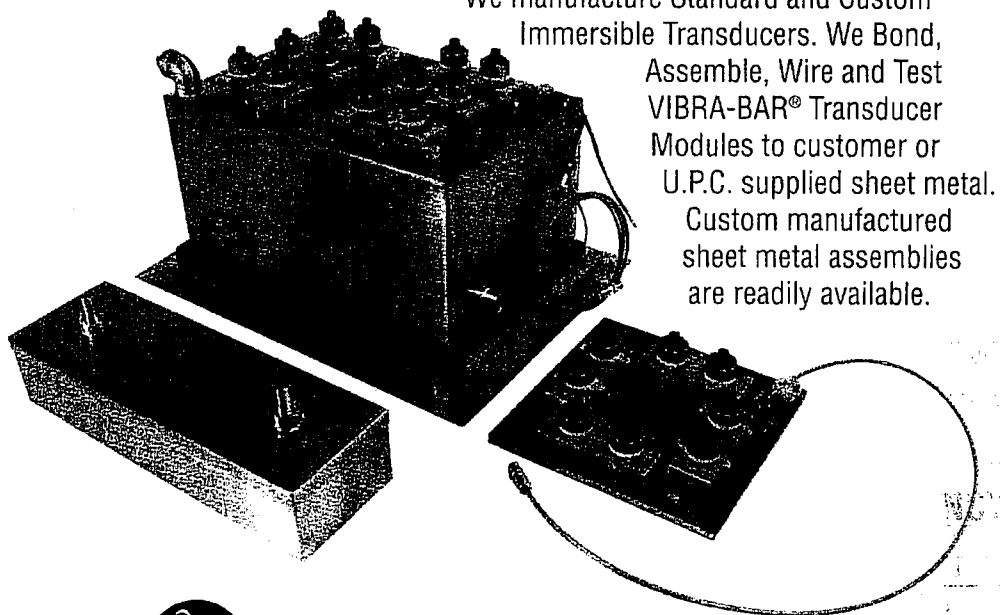
40 kHz – 25 kHz Models  
250 Watt Ultrasonic Generators  
500 Watt Ultrasonic Generators

Power Intensity Control (Optional)

GENERATOR	POWER OUTPUT (WATTS)			MAXIMUM POWER INPUT 120V/50-60Hz	OVERALL DIMENSIONS W L H	NUMBER PLUG-IN MODULES
	Full Wave Average	Half Wave Average	Full & Half Wave Peak			
40kHz OR 25kHz - 250 WATTS	250	125	500	3A/360W	5 1/4" x 14" x 12 1/4"	1
40kHz OR 25kHz - 500 WATTS	500	250	1000	6A/720W	5 1/4" x 14" x 12 1/4"	1
40kHz OR 25kHz - 750 WATTS	750	375	1500	9A/1080W	10 1/2" x 14" x 12 1/4"	2
40kHz OR 25kHz - 1000 WATTS	1000	500	2000	12A/1440W	10 1/2" x 14" x 12 1/4"	2
40kHz OR 25kHz - 1500 WATTS	1500	750	3000	18A/2160W	15 3/4" x 14" x 12 1/4"	3

## Transducer Products and Services

We manufacture Standard and Custom Immersible Transducers. We Bond, Assemble, Wire and Test VIBRA-BAR® Transducer Modules to customer or U.P.C. supplied sheet metal. Custom manufactured sheet metal assemblies are readily available.



**ULTRASONIC POWER**  
CORPORATION

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